

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
International Merchandise Return Service Agreements
With Foreign Postal Operators 2

Docket No. MC2016-94
Docket No. CP2016-119

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD COMPETITIVE
INTERNATIONAL MERCHANDISE RETURN SERVICE AGREEMENTS
WITH FOREIGN POSTAL OPERATORS PRODUCT 2 TO THE
COMPETITIVE PRODUCTS LIST

(March 15, 2015)

The Public Representative hereby provides comments pursuant to Order No. 3143.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Request filed pursuant to 39 U.S.C. §3642 and 39 CFR 3020.30 *et seq.*, to add the Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2 (IMRS-FPO 2) product to the Competitive Products List within the Mail Classification Schedule (MCS).²

Included as Attachment 1 to the Request is an application for non-public treatment of materials filed under seal. Attachment 2 is a public (redacted) copy of Governors' Decision No. 11-6 and related analysis. Attachment 3 is the Statement of Supporting Justification (Statement) required by 39 CFR 3020.32. Proposed changes to the MCS are presented in Attachment 4. Attachment 5 is a public version of the IMRS-FPO 2 Model Agreement (Model Agreement) with Annex. A certification of

¹ Order No. 3143, Notice and Order Concerning Addition of Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2 (IMRS-FPO 2) to the Competitive Product List, March 9, 2015.

² Request of the United States Postal Service to Add Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2 (IMRS-FPO 2) Product to the Competitive Product List and Notice of Filing IMRS-FPO Model Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, March 8, 2016 (Request).

compliance of the competitive product's prices with 39 U.S.C. §3633(a) is provided in Attachment 6. Attachment 7 is a public version of the management analysis of the methodology for determining the minimum and maximum settlement rates (Management Analysis). The Postal Service also filed under seal a non-public (unredacted) version of Governor's Decision No. 11-6, Management Analysis, Model Agreement, and a supporting financial model setting minimum and maximum rates and estimating costs.

The IMRS-FPO 2 product is designed to provide U.S. consumers with an option to return merchandise purchased from companies operating abroad. *Id.*, Attachment 7 at 1. The merchandise is entered with and returned by the Postal Service using Express Mail and Air Parcel Service to a foreign postal operator, which pays negotiated rates established by agreement with the Postal Service. *Id.* at 2.

The Commission approved the predecessor agreement to this request, IMRS-FPO, in Docket Nos. MC2015-68 and CP2015-99.³ The Postal Service states that this product's model agreement has several differences from the IMRS-FPO model agreement. Request at 5. These include different rates and minor changes to the time frame in Article Five of the Annex. *Id.*

The Postal Service anticipates additional changes to IMRS-FPO will be necessary in the future, particularly for updating minimum and maximum prices in the rate ranges. *Id.* at 6. As the Postal Service updates these prices and ranges, these modifications and amendments will be filed with the Commission. *Id.* In effect, these amendments will be treated similarly to the Global Expedited Package Services – Non-Published Rates (GEPS-NPR) series of products.

³ See Order No. 2639, Order Conditionally Approving Addition of Competitive International Merchandise Return Service Agreements With Foreign Postal Operators (IMRS-FPO) to the Competitive Product List, Docket Nos. MC2015-68 and CP2015-99.

COMMENTS

The Public Representative has reviewed the Postal Service's Request and Statement of Supporting Justification, as well as the Model Agreement, Management Analysis and supporting financial model filed under seal with the Request. The Public Representative also reviewed the Postal Service's initial justification for, and the Commission's analysis conditionally approving, the IMRS-FPO product in Docket Nos. MC2015-68 and CP2015-99.⁴ For the reasons stated below, the Public Representative recommends that the Commission approve the Postal Service's Request.

Compliance with Section 3642 and 39 CFR 3020.30 et seq. Section 3642 establishes criteria for all Commission determinations with respect to adding a new product to a product list, or removing an existing product from, or transferring such a product between, product lists. 39 U.S.C. 3642(b). The test established in section 3642(b) (1) for determining whether a product is market dominant is whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products."

The Postal Service states that the IMRS-FPO 2 product does not qualify as market dominant since the Postal Service does not exercise sufficient market power in the market for international return shipping services. Request, Attachment 3 at 2. In this regard, the Postal Service asserts that significant competition can be found in the return shipping marketplace, citing return shipping services offered by FedEx, UPS and DHL as part of a "closed, end-to end network." [Citation omitted] *Id.*

When considering a request to add new products to the MCS, section 3642(b) (3) requires the Commission to give due regard to three "additional considerations." As required by 39 CFR 3020.32, the Postal Service provides a Statement of Supporting Justification (Attachment 3 to the Request) to address those considerations. Among

⁴ See Order No. 2639, Order Conditionally Approving Addition of Competitive International Merchandise Return Service Agreements With Foreign Postal Operators (IMRS-FPO) to the Competitive Product List, Docket Nos. MC2015-68 and CP2015-99.

other required information, Attachment 3 describes the availability and nature of enterprises in the private sector engaged in the delivery of the product. The Postal Service notes that many shipping service companies facilitate the process of making returns by creating merchant-addressed mailing labels and distributing such labels in preprinted form or by email to customers for their use in the event of a return. *Id.* at 3. The Postal Service also identifies by reference FedEx, UPS and DHL as enterprises in the private sector currently offering return shipping services. *Id.*

Attachment 3 further describes the likely impact of the modification on small business concerns. The Postal Service states that addition of the IMRS-FPO 2 product will have little, if any, impact upon small business concerns given the highly competitive market for international return services comparable to the IMRS-FPO 2 service. *Id.* at 4. Moreover, it anticipates that introduction of the IMRS-FPO 2 product will provide small businesses with an additional option for their international shipping needs. *Id.*

Attachment 3 provides no information on the views of those who use the product on the appropriateness of the modification. The Postal Service states that IMRS-FPO is not used by any current customer. *Id.*

39 U.S.C. § 3633. As required by 39 CFR 3020.32(c), Attachment 3 also addresses whether the competitive IMRS-FPO 2 product complies with 39 U.S.C §3633(a). Based upon the financial model, the Public Representative concludes that the IMRS-FPO 2 product, if approved, should generate sufficient revenue to cover costs, and therefore will not adversely affect the Postal Service's ability to make an appropriate contribution to institutional costs. As a result, the competitive IMTS-FPO 2 product will not be subsidized by market dominant products. *Id.*

The Public Representative concludes that the Postal Service's Request and the Statement of Supporting Justification are consistent with 39 U.S.C. 3642 and the Commission's Rules. The Public Representative therefore recommends that the IMRS-FPO 2 product be added to the Competitive Product List.

CONCLUSIONS

The Public Representative concludes that the Postal Service's Request is consistent with 39 U.S.C. § 3642(b) and 39 CFR 3020.30 *et seq.*, and therefore the Commission should add the IMRS-FPO 2 product to the Competitive Product List.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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